IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.685 of 2006
IN
SPECIAL CIVIL APPLICATION No.15545 of 2004
With
CIVIL APPLICATION No.4859 of 2006

For Approval and Signature:
HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA Sd/-

HONOURABLE MR.JUSTICE D.A.MEHTA **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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TORRENT POWER AEC LTD - Appellant(s)
Versus
SHREEJI (RAKHIAL) COMMERCIAL CO-OPRATIVE HOUSING SOC. LTD. - Respondent(s)

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Appearance :
MR MJ THAKORE, SENIOR COUNSEL, with MR PRAFUL N THAKKAR for Appellant(s) : 1,
MR MAYUR RAJGURU for Respondent(s) : 1,

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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 01/05/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This Letters Patent Appeal challenges judgment and order dated 31st August, 2005 passed by the learned Single Judge in Special Civil Application No.15545 of 2004. The appellant herein is the original respondent and the respondent is the original petitioner. Hereinafter, for the sake of convenience, the parties shall be referred to as per their respective description in the petition.

2. The petitioner approached the respondent – Electricity Company for grant of electric connection. The respondent-Electricity Company, instead of granting the connection, called upon the petitioner to pay the outstanding dues amounting to Rs.12,30,16,068.54 which were due from the erstwhile owner of the premises upto the date of dis-connection i.e. 15th July, 1999. The petitioner, therefore, challenged the said claim and the refusal to grant electric connection by way of a writ petition which came to be allowed by the learned Single Judge vide the impugned judgment.

3. The respondent – Electricity Company in the present appeal has assailed the impugned judgment principally

on the ground that the learned Single Judge has erred in placing reliance on the decisions of Supreme Court in case of – (i) M/s. Isha Marbles V/s. Bihar State Electricity Board, 1995 (2) SCC 648; (ii) Ahmedabad Electricity Company Ltd. V/s. Gujarat Inns Pvt. Ltd. & Ors., 2004 (3) SCC 587 = 2004 (2) GLR 1363; and (iii) order dated 21.10.2004 made by this Court in Special Civil Application No.2162 of 2003. That the said decisions were rendered under the provisions of the Indian Electricity Act, 1910 (old Act), while the present case is governed by the provisions of the Electricity Act, 2003 (the Act). In this connection the learned counsel appearing on behalf of the respondent-appellant has placed reliance on the provisions of Section 2(15) which defines “consumer”, Section 2(70) which defines “supply”, Section 43 which deals with “duty to supply on request”, Section 56 which deals with “disconnection of supply in default of payment” of the Act to submit that the entire scheme has undergone change and Electricity Company is now required to supply power to premises and not to a person. Therefore, according to the learned counsel, even if the premises are transferred the

transferee is liable to clear the dues of the transferor. He has also placed reliance on provisions of Section 50 of the Act which permits the State Commission to specify the Electricity Supply Code, and invited attention to Regulations 4.1.11, 4.1.16, 4.1.17, 4.8.1, 4.8.3 and 8.7.5 of the Electricity Supply Code to contend that on a conjoint reading of the aforesaid provisions of the Act and the Regulations the Electricity Company is entitled to recover the outstanding arrears even in a case where the ownership is transferred because the connection is granted to 'the premises' and not to the owner or the occupier of the premises.

4. In support of the submissions reliance has been placed on an unreported order made by this Court on 18th July, 2005 in Letters Patent Appeal No.691 of 2003 in the case of Gujarat Electricity Board Vs. Jaisal Silk Mills Pvt. Ltd.

5. Undisputed facts are that the petitioner purchased the property of Raipur Manufacturing Company Limited, which went into liquidation and was wound up by order

dated 15th October, 2001 in Company Petition No.114 of 2001. It is an admitted fact that the property was purchased at a public auction held and confirmed by the Company Court vide order dated 2nd December, 2002. In pursuance thereto the petitioner made an application on 13th August, 2004 to the respondent-Electricity Company for supply of power. Therefore, on the date of the application both the petitioner and the respondent-Company were admittedly governed by the provisions of the Act. Hence, the only issue that requires consideration is whether the respondent-Electricity Company is entitled to call upon the petitioner to pay the outstanding dues of the erstwhile owner of the premises in light of the provisions of the Act and the Regulations. The Court has, therefore, examined the controversy independent of the decisions rendered prior to the Act coming into force.

6. The relevant provisions of the Act and the relevant Regulations are reproduced hereinbelow for the sake of ready reference:

> **Section 2 (15)** "consumer" means any person who is supplied with electricity for his own use

by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

Section 2(70) "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

Section 43. Duty to supply on request. -- (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission;

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1);

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Section 50. The Electricity Supply Code.-- The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of

electricity for non-payment thereof, restoration of supply of electricity, tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plant or meter.

Section 56. Disconnection of supply in default of payment –(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,--

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months;

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

Gujarat Electricity Regulatory Commissioner (GERC)

Electricity Supply Code and Related Matters Regulations

Regulation 4.1.11 An Application for new connection, reconnection, addition or reduction of load, change of name or shifting of

Service Line need not be entertained unless any dues of the Applicant to the Distribution Licensee in respect of any other service connection held in his name anywhere in the jurisdiction of the Distribution Licensee have been cleared.

Regulation 4.1.16 The Distribution Licensee shall give no dues certificate to consumer on his request to avoid any possibilities of pending dues of previous owner while purchasing new house premises.

Regulation 4.1.17 The Distribution Licensee will not provide more than one connection/meter for one premises. The consumers opting for second meter will have to produce separate legal entity such as documents of separate Income Tax No/Sales Tax No. ration card and rent or lease agreement.

Regulation 4.8.1 The Consumer shall not without prior consent in writing of the Distribution Licensee assign, transfer or part with the benefit of the Agreement executed with the Distribution Licensee nor shall part with or create any partial or separate interest there under in any manner. Transfer of service connection will be effected on application in

case the registered consumer is dead or if the ownership or occupation of the property has changed or transferred. In all cases of such transfers, the arrears of every description shall be paid in full together with transfer fee as prescribed in relevant GERC Regulations.

Regulation 4.8.3 Where Premises to which electricity is supplied by Licensee is transferred to transferee and the transferee does not get service connection in the Premises transferred to his name, and continues to use the service connection in previous name, the transferee shall be responsible for payment of running energy bills as well as unpaid dues of energy bills and other amounts relating to the service connection. The dues to the Distribution Licensee shall be payable on demand, in default of which the supply to the Premises may be disconnected, subject to the provisions of the Acts, rules and regulations for the time being in force.

Regulation 8.7.5 In case of disconnection of supply for non payment of any charge for electricity or any sum other than a charge for electricity dues from the consumer to the Distribution Licensee in respect of supply or wheeling of electricity to the consumer, he will not be permitted to have electricity connection

from any other Distribution Licensee.

7. On a conjoint reading of the provisions it is not possible to accept the case of the respondent – Company. Section 43 of the Act deals with "duty to supply power on request". Under sub-section (1) of Section 43 of the Act it is provided that on an application by the owner or occupier of any premises the distribution licensee is bound to give supply of electricity to such premises, within one month of the receipt of the application for such supply. The emphasis on behalf of the respondent-company that the electricity is required to be supplied "to such premises" is misplaced. In the first instance, the application is by the owner or occupier of any premises, and hence, the phrase "such premises" takes meaning from the preceding portion viz. owner or occupier of the premises. This becomes abundantly clear when one reads the definition of the term "consumer" which talks of any person who is supplied electricity and includes any person whose premises are for the time being connected for the purpose of receiving electricity. In other words, the consumer is one who receives, or is supplied electric power and the premises are of the

consumer. Section 2(70) which defines "supply" specifically states that supply means sale of electricity to a consumer. The definition does not talk of supply of electricity to the premises.

8. When one proceeds to read Section 56 of the Act in the aforesaid backdrop, it is apparent that supply of electric power can be dis-connected where any person neglects to pay any charge for electricity in respect of supply which was made to the said person. Section 56 of the Act does not talk of any premises neglecting to pay any charge for electricity. In fact premises cannot be a consumer and, therefore, the stand of the electricity company does not merit acceptance. It goes without saying that only a person can be the consumer viz. the user of the electricity power and premises, divorced of a person, cannot be user of the electricity power supply.

9. The Regulations of the Supply Code also do not carry the case of the respondent-company any further. Regulation 4.1.11 only states that in case of a new connection etc., an application need not be entertained unless any due of

the applicant in respect of any other service connection held in his name have been cleared. Meaning thereby the same consumer cannot apply for a new connection etc. unless and until dues of any other service connection held in the name of the same consumer are cleared. Similarly, Regulation 4.1.16 stipulates that where in any area there are two competing distributors of power supply a distributor shall give No Dues Certificate to the consumer to avoid any possibility of pending dues of previous owner while purchasing new house premises, if the consumer makes such a request. From that it does not flow that if the consumer does not obtain such a No Dues Certificate he cannot be granted a new connection because of outstanding dues of previous owner.

10. Regulation 4.1.17 instead of assisting the case of the respondent-Company works to the advantage of the consumer. It is provided in the said regulation that the distributor shall not provide more than one connection for one premises, but where a consumer opts for a second connection/meter such consumer will have to

produce documents showing existence of a separate legal entity such as separate Permanent Account Number, separate Sales Tax Number, separate ration card and/or a rent/lease agreement. In other words, once there is a separate legal entity in existence, in the same premises there could be more than one connection in case the same premises are occupied by two or more independent legal entities. Therefore, this Regulation gives an inherent indication in the scheme of the Act and the Regulations that the connection is not to the premises but to the person viz. a separate legal entity. It is necessary to take note of the definition of the term “person” which is defined by Section 2(49) of the Act to include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.

11. Similarly, Regulations 4.8.1 and 4.8.3 falling under the head ‘Transfer of Service connection” cannot come into play in the case of a third party auction purchaser at a public auction. Regulation 8.7.5 stipulates that where power supply is disconnected for non-payment of any

charges the consumer will not be permitted to obtain electricity connection from any other distributor. This regulation also does not stipulate that the supplier can withhold supply of power and reject an application for new connection in case of a third party auction-purchaser.

12. The reliance on the unreported decision of this Court in Letters Patent Appeal No.691 of 2003 in the case Gujarat Electricity Board Vs. Jaisal Silk Mills Pvt. Ltd. (supra) also cannot carry the case of the respondent any further for the simple reason that admittedly there is no provision in the Regulations akin to clause 2(j) of the Conditions of Supply which were framed in light of the provisions of the old Act.

13. During the course of submissions the learned counsel for the respondent-appellant placed reliance on the following observations made in Paragraph No.62 of the Apex Court decision in case of M/s. Isha Marbles V/s. Bihar State Electricity Board (supra):

> "62. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property and behoves everyone to respect public property. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, *infinitum* without the payment of the dues to the extent of lacs and lacs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness."

This cannot be termed to be a case of dishonest consumer transferring the unit from one hand to another. The petitioner has purchased the property at a public auction held under the aegis of the Company Court and one cannot term a company which is wound up to be a dishonest consumer.

14. In support of the submissions the learned counsel also placed reliance on the observations made by the Apex Court in Paragraph No.3 of the judgment in case of Ahmedabad Electricity Company Ltd. V/s. Gujarat Inns Pvt. Ltd. & Ors. (supra) to submit that the wide proposition of law laid down in M/s. Isha Marbles V/s. Bihar State Electricity Board case (supra) called for re-consideration. Firstly, this Court, while deciding the appeal, has not proceeded on the footing that the law laid down in M/s. Isha Marbles V/s. Bihar State Electricity Board case (supra) concludes the issue, but has independently examined the provisions of the Act, as admittedly the dispute between the parties has arisen after the Act came into force in 2003; and secondly, re-consideration, if any, of the proposition of law laid down by the Apex Court can only be undertaken by the Apex Court and not this Court.

15. In the circumstances, for the reasons stated hereinbefore, no interference is called for in the

impugned judgment dated 31.08.2005 and the appeal is, accordingly, summarily dismissed.

ORDER IN CIVIL APPLICATION NO.4859 of 2006

In light of the order in appeal, this Civil Application is rejected as having become infructuous.

Sd/-
[Y.R. MEENA]
ACTG. CHIEF JUSTICE

Sd/-
[D.A. MEHTA]
JUDGE

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Bhavesh*